

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 18TH DAY OF JUNE 1998

BEFORE :

THE HON'BLE MR.JUSTICE TIRATH S.THAKUR

31162/93,  
WRIT PETITION Nos ~~31162/93~~ 35526/93.  
& 35510/1993.

BETWEEN :-

Sri.M.Selvaraj,  
Major in age,  
Civil Contractor,  
No.482, 7th Main, 7th  
Cross, Gokul II Phase,  
BANGALORE-560 054.

...Petitioner-in  
W.P.No. ~~31162/93~~  
31162/93.

( By Sri.M.Ramamohan, Adv., )

A N D :

1. The Commissioner of  
Commercial Taxes in  
Karnataka, Vaniya Therige  
Karyalaya, Gandhinagar,  
BANGALORE-560 009.
2. The Asst. Commissioner of  
Commercial Taxes,  
38th Circle,  
BANGALORE.
3. The Tahsildar,  
P.U.C. & other Recoveries,  
Division-3, IInd Floor,  
Krishi Bhavan,  
BANGALORE.

...Respondents.

( By Sri.K.M.Shivayogiswamy, HCGP, in all the  
petitions. )

...2

This writ petition filed praying to strike down Sl.No.4 & 6 of Circular No.CLR.CR.404,353,351,126 and 517/89-90 dt.24-10-89 and CLR.CR.No.198/90-91 dt. 15-12-1990 vide Annexures-A & B respectively;

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BETWEEN :-

Sri.M.Gopala Reddy,  
Major, Contractor,  
No.53/A, 16th 'C' Main  
Road, 4th Block, Kormangala,  
BANGALORE-560 034.

...Petitioner in  
W.P.No.35526/93.

( By Sri.B.V.Prabhakar, Adv., )

A N D :

1. The Commissioner of  
Commercial Taxes,  
Vanijya Terige Karyalaya  
Gandhinagar,  
BANGALORE-560 009.
2. The Assistant Commissioner  
of Commercial Taxes,  
30th Circle,  
BANGALORE.

...Respondents.

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This writ petition filed praying to strike down Sl.Nos.4 & 6 of Circular No.CLR.CR.404,353,126 and 317/89-90 dt.24-10-89 and CLR.CR.198/90-91 dt.15-12-90 vide Annexures-A & B respectively issued by Ist respondent, etc.,

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BETWEEN :-

K.N.Chowdappa,  
aged about 50 years, s/o  
Doddananjappa, r/o No.129,  
I Main Road, West of Chord Road,  
II stage, Mahalakshmiपुरam,  
BANGALORE-86.

...Petitioner in  
W.P.No.35510/93.

...3

( By Sri.S.Chennaraya Reddy,Adv., )

A N D :

1. The State of Karnataka  
by its Secretary to Govern-  
ment, Finance Department,  
Vidhana Soudha,  
BANGALORE-560 001.
2. The Assistant Commissioner of  
Commercial Taxes, 37th Circle,  
Srinivasa Complex, 1st Main  
Road, Seshadripuram,  
BANGALORE-560 020.

...Respondents.

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This writ petition filed praying to direct the respondents to compute the taxable turnover for the purpose of Sec.17 by excluding labour and service and thereafter to fix the rate of composition only on the sale turnover of goods and materials, etc.,

These writ petitions coming on for orders this day the Court made the following order :

O R D E R

The petitioners have in these writ petitions called in question certain clarifications issued by the Commissioner of Commercial Taxes from time to time in the nature of circulars. They have also prayed for a mandamus directing the respondents to compute their liability to pay sales tax u/s.17(6) of the Act after excluding labour and service charges from their gross receipts.

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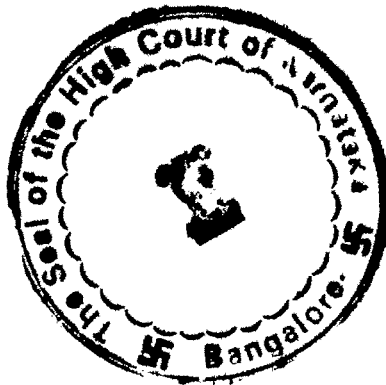
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2. No one has appeared on behalf of the petitioners to support these petitions.
3. Mr Shivayogiswamy, learned Govt. Pleader submitted that in so far as the circulars issued by the Commissioner are concerned, the same stood withdrawn consequent upon the decision of this Court in Jagadish Colour Lab's case (ILR 1996 Kar 205). In that view of the matter, therefore, it is unnecessary for this Court to examine the validity of the impugned Circulars which no longer hold the field.
4. The only other question that falls for consideration is whether the petitioners can demand exclusion of certain payments like service and labour charges from their turnovers while claiming the benefit of reduced rate of tax u/s. 17(6). A plain reading of Sec. 17 however shows that the same gives an option to the assessee to pay tax by way of composition at the reduced rates by reference to his total turnover or to opt for a regular Assessment u/s. 5B in which event he may be entitled to all such deductions as may otherwise be legally permissible. There is indeed no compulsion for the assessee to subject himself to the alternative mode of assessment provided by Sec. 17. If the method of taxation prescribed by Sec. 17 namely levy by reference to the total turnover is not for

any reason acceptable to the assessee, it is open to him to opt for the regular mode of assessment recognised by the Act. In case however he opts for the composition method u/s.17, he shall have to subject himself to the rigors of the said provision without claiming any additional advantages in the nature of exclusion of certain charges from the process assessment and levy of tax. To the same effect is the view expressed by their Lordships of Supreme Court in STATE OF KERALA & ANOTHER .v. BUILDERS ASSOCIATION OF INDIA AND OTHERS / 104 STC page- 134 /, where their Lordships were considering the question of validity of a similar provision found in the Kerala Sales Tax Act. Respectfully following the said decision, I see no reason to interfere or issue a mandamus as prayed for. These writ petitions therefore fail and are hereby dismissed but in the circumstances without any orders as to costs.

Sd/-  
JUDGE



jm/-  
Jan/-